IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(*Special Original Jurisdiction*)

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WEDNESDAY, THE TWENTYSEVENTHY DAY OF JULY

TWO THOUSAND AND FIVE

P R E S E N T

THE HON'BLE SRI JUSTICE ELIPE DHARMA RAO

WRIT PETITION No.16443 OF 2005

Between:

Talla Mohan Krishna & Anr. … Petitioner

Versus

The District Collector

Chittoor district & Ors. … Respondents

Counsel for the Petitioner : Mr. P.V. VIDYA SAGAR

Counsel for Respondents : Govt.Pleader for Revenue

THE HONOURABLE SRI JUSTICE

ELIPE DHARMA RAO

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WRIT PETITION No.16443 OF 2005

O R D E R :

Questioning the Form No.1 Notice issued under Rule 3 of A.P. Assigned Lands (Prohibition of Transfers) Rules, 1977 under Proceedings ROC.No.(B) 95/2005, dated 29-6-2005 by the third respondent directing the petitioner to show cause

within fifteen days of receipt of the notice as to why he should not be summarily evicted from the dry land in an extent of Acs:3-00 in survey no.633/10 situate at Angallu village of Kurabalakota Revenue Mandal, Chittoor district and as to why any crop or other product raised in the said land/any building or other construction erected or anything deposited thereon should not be forfeited and the DKT patta should not be cancelled and the land resumed to the Government, the present writ petition is filed seeking to declare the impugned notice as arbitrary, illegal, unjust, without jurisdiction and violative of the principles of natural justice and consequently set aside the same.

The first petitioner is an Ex-Serviceman, who served in Indian Air Force for 15 years and retired as Sergeant in 1993. Since then, he settled down in Madanapalle town, which is his native place.

The first petitioner submits that one year before his retirement from service, he applied for assignment of agricultural land, as the pension he would be getting would be too meager to maintain his family. On 30-8-1992, the third respondent granted assignment to the petitioner in an extent of Acs:3-00 of dry land covered by survey no.633/10 of Angallu village, Kurabalakota Mandal, with certain conditions. At the time of assignment, the said land was with full of bushes and boundaries. Thereafter, the petitioner developed the land and made the same fit for cultivation and started raising dry crops; viz., Hark gram and Groundnuts etc.

The first petitioner submits that on 01-10-2004, he gifted the same to his wife under a

registered settlement deed and delivered possession thereof to her and thereafter intimated the said fact to all the respondents on 11-10-2004 by registered post with acknowledgement due.

While things stood thus, the third respondent issued notice dated 02-6-2005 to the petitioner, which was received on 24-6-2005, calling upon him to show cause within fifteen days from the date of receipt of the notice, as to why he should not be summarily evicted from the assigned land and why the said assignment should not be cancelled and the land be resumed to the Government, as the petitioner acted in contravention of the provisions of sub-section (7) of Section 3 of AP Lands (Prohibition of Transfers) Act, 1977.

In pursuance to the said show cause notice, the petitioner submitted his explanation to the first respondent under registered post with acknowledgement on 24-6-2005 and marked copies thereof to the second and third respondents by enclosing passbook.

Mr.P.V.Vidyasagar, the learned senior counsel for the petitioners seeks to contend that while the matter stood thus, after submitting the explanation the petitioner bonafidely felt that the matter was given a quietus. But to the utter shock and dismay, the third respondent passed impugned Proceedings ROC. (B) 95/05, dated 29-6-2005 stating that during inspection made on 21-6-2005 it came to light that the petitioner failed to bring the assigned land under cultivation and as the assigned

land is required for public purposes and Government intended to resume the assign land. Therefore, a notice was sought to be served on him, as the petitioner was not available for effecting service of notice on him, the notice was thereupon pasted to a stick and planted in the assigned land, requiring him to submit his explanation within seven days and as there was no response from him, the assignment granted in his favour has been cancelled.

The learned counsel for the petitioners further submits that earlier the assignment of the land in question was granted to him on 30-8-1992. Immediately, thereafter, he reclaimed the assigned land as it was full of bushes and boulders and made it fit for cultivation. Thereafter, he was cultivating the assigned land till and executed the registered settlement deed in favour of his wife, the second petitioner herein. But nevertheless, the third respondent, in the first instance, issued notice signed by him on 02-6-2005 alleging that the petitioner alienated the assigned land in contravention of the conditions of assignment.

In this context, it is relevant to point out that as per GOMs.No.1117, Revenue (Assignment) Department, dated 11-11-1993 Ex-Serviceman are permitted to alienate the lands after a period of ten years. As in the present case, the alienation made by the petitioner in favour of the second petitioner was effected ten years of the assignment granted to him. The learned counsel for the petitioner submits that the third respondent was divested of jurisdiction to deal with the land assigned to him. Even if he failed to bring the assigned land under cultivation within three years

from the grant, it was open to the third respondent or as a matter of fact to all the respondents to resume the assigned land on the ground that it was not brought under cultivation, and therefore, resumable for any public purpose especially when more than ten years have elapsed from the date of grant of the assignment of the respondents have therefore divested of jurisdiction to cancel the assignment and resume the land. Be that as it may, when the petitioner received the first notice alleging contravention of the provision of sub-section 7 of Section 3 of the AP Assigned Lands (Prohibition of Transfers) Act 1977 it is too presumptions to contend in the order, dated 29-6-2005 that the petitioner was not available at all for being served with notice of the proposed action.

The learned counsel for the petitioner submits that the assigned land is not far away to Madanapalle town, where he is residing with his family members. It is situate at a distance of about 2 Kms from Madanapalle. Therefore, what is stated in the order dated 29-6-2005 that the first petitioner was not available for effecting service of notice on him, a copy thereof was pasted to a stick and planted in the assigned land is a make believe one. The learned counsel for the petitioners submits that realizing that they could not cancel the assignment on the ground that the petitioner alienated the assigned land, the respondents have come forward with the story that the first petitioner did not brought the assigned land under cultivation within three years from the grant, thereof, which is palpably untrue, if it were a fact that the petitioner did not bring the assigned land under cultivation within three years from the date of assignment, there is no reason as to why steps have not been taken by the

respondents to cancel the assignment land and resume the same. Therefore, the very fact that no such steps were taken earlier is itself an indication that the present contention of the respondents that the first petitioner did not bring the assigned land under cultivation within three years from the date of grant is an after thought on their part and a ruse to evict the petitioners from the assigned land and cancel the assignment at any cost. The petitioners are continuing to be in possession and enjoyment thereof even till date without any let or hindrance.

Considering the facts and circumstances, without going into the merits or otherwise, I deem it appropriate to dispose of the writ petition at the admission stage with a direction to the petitioners to treat the impugned notice dated 02-6-2005 as order and also the order dated 29-6-2005 passed in ROC.No.(B) 95/2005 by the third respondent and submit his explanation within two weeks from the date of receipt of a copy of this order. Thereafter, on submission of explanation by the petitioner, the third respondent is directed to consider and dispose of the explanation of the petitioner and pass appropriate order on merits and in accordance with law, within eight weeks thereof, after giving reasonable opportunity of hearing the petitioners and till such time, there shall be interim suspension of the proceedings ROC.No.(B) 95/2005, dated 29-6-2005.

With the above direction, the writ petition is disposed of at the admission stage. No costs.

JULY 27th, 2005. ----------

I S L. ELIPE DHARMA RAO, J.

To

1. The District Collector, Chittoor district.
2. The Revenue Divisional Officer, Madanepalle, Chittoor district.
3. The Mandal Revenue Officer, Kurabalakota Mandal, Chittoor district.
4. Two CCs to Govt.Pleader for Revenue, High Court Buildings, High Court of AP Hyderabad.
5. One CC to Mr.P.V.VIDYASAGAR, Counsel for the Petitioners.

6. Two CD copies.